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5 Attorneys for Creditor WOLF FAMILY
6 SERIES LP d/b/a SERIES III, WOLF
7 FAMILY SERIES LP d/b/a SERIES VII;
ONTARIO ENTERPRISES OF THE WOLF
FAMILY SERIES LP

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Case No. 18-23538-RDD

SEARS HOLDINGS CORPORATION,
Debtor.

(Jointly Administered)

Debtor.

**OBJECTION OF WOLF FAMILY SERIES LP D/B/A SERIES III, WOLF FAMILY
SERIES LP D/B/A SERIES VII, ONTARIO ENTERPRISES OF THE WOLF FAMILY
SERIES LP TO SUPPLEMENTAL NOTICE OF CURE COSTS AND POTENTIAL
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTION**

19 Wolf Family Series LP d/b/a Series III, Wolf Family Series LP d/b/a Series VII,
20 Ontario Enterprises of the Wolf Family Series LP (collectively “Wolf”) hereby files this
21 objection (the “Objection”) to the *Supplemental Notice of Cure Costs and Potential*
22 *Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection*
23 *With Global Sale Transaction* [Docket No. 1774] (the “Supplemental Cure Notice”). In
24 support of this Objection, Wolf states as follows:

BACKGROUND

26 1. Beginning on October 15, 2018 (the “Petition Date”) and continuing
27 thereafter, the Debtors each filed a voluntary petition for relief under Chapter 11 of Title
28 11 of the United States Code (the “Bankruptcy Code”).

2. On November 19, 2018, the Court entered the *Order Approving Global Bidding Procedures and Granting Related Relief* [Docket No. 816] (the “Global Bidding Procedures Order”).¹

3. On November 26, 2018, the Court entered the *Final Order Approving (I) Procedures for Store Closing Sales and (II) Assumption of Liquidation Consulting Agreement* [Docket No. 876] (the “Store Closing Order”).

4. On January 18, 2019, the Debtors filed *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Global Sale Transaction* [Docket No. 1731] (the “Cure Notice”); and (b) the Global Sale Transaction as described and defined in the *Notice of Successful Bidder and Sale Hearing* [Docket No. 1730] (the “Successful Bidder Notice”).

5. On January 23, 2019, the Debtors filed the Supplemental Cure Notice. Exhibit A to the Cure Notice identifies a purported “executory contract” with “Series VII of the Wolf Family” and no other information. *See*, Cure Notice, Exhibit B-1., p. 49, at No. 194, a true and correct copy of which is attached hereto as Exhibit “1”.

6. On January 25, 2019, Wolf filed an Objection to the Cure Notice . Wolf (and specifically Wolf Family Series LP d/b/a Series VII) is a party to an unexpired sublease of real property with Debtors (the “Sublease”) for a portion of the real property leased by Debtors from Wolf (and specifically Wolf Family Series LP d/b/a Series III) (the “Master Lease”) and identified as Store #3483.

PRELIMINARY OBJECTIONS

7. The Master Lease is inescapably intertwined with the Sublease and one cannot be assumed or assigned without the other.

8. The Lease and Sublease are both in default and Debtors are in breach of the terms thereof by virtue of their failure to maintain and secure the real property and Store

¹ Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Global Bidding Procedures Order.

1 No. 3483 after closing operations on or about January 15, 2019. Store No. 3483 as well as
2 the surrounding leased property were breached and a number of squatters took up
3 residence thereon. Worse yet, repeated requests from Wolf to Debtors' counsel were
4 ignored before and thereafter. Wolf was denied access to the leased premises for purposes
5 of conducting an inspection and securing the property before the squatters broke in and
6 took up residence. Wolf provided written notice of default under the Lease. *See, Exhibit*
7 "2" hereto. Thereafter, Debtors' counsel continued to ignore Wolf requests and instead
8 threatened Wolf with a violation of the automatic stay for declaring a post-Petition Date
9 default under the Lease in light of the Debtors' post-Petition Date breaches. *See, Exhibit*
10 "3" attached hereto.

11 9. Debtors are further in direct violation of the Store Closing Order. The Store
12 Closing Order provides: "Debtors will keep each store premises and surrounding areas
13 clear and orderly consistent with past practices." *Id.*, Exhibit 2. ¶(m).

14 10. Wolf objects to the Proposed Cure Amounts set forth in the Supplemental
15 Cure Notice. In order to assume and assign the Lease and Sublease, the Debtors or the
16 Buyer must promptly cure all defaults. 11 U.S.C. §365(b)(1). The unpaid amounts
17 actually owed by the Debtors to Wolf for post-petition damages, costs and fees are being
18 still being fixed in light of the ongoing nature of Debtors' defaults. Wolf will amend this
19 Objection as soon as those amounts become ascertainable. Wolf estimates these amounts
20 at no less than \$25,000.00.

21 11. Wolf also objects to the Global Asset Transaction to the extent it includes an
22 assumption or assignment of the Lease or Sublease without first complying with Section
23 365(b)(1) of the Bankruptcy Code.

24 **RESERVATION OF RIGHTS**

25 12. Wolf continues to review the APA, the related pleadings, documents and
26 information that have been filed with the Court. Wolf also continues to gather information
27 regarding the extent of the damages caused by the Debtors' on-going post-Petition Date
28 breaches so that it may amend its Objections. In addition, a number of other agreements,

1 pleadings and information has not yet been disclosed and may be disclosed or learned after
2 the filing of this Objection. Accordingly, Wolf expressly reserves the right to amend,
3 supplement, and/or modify this Objection and to file in the future additional appropriate
4 pleadings.

5
6 DATED: January 31, 2019

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

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8
9 By: /s/ Simon Aron
10 SIMON ARON
11 Attorneys for Creditor WOLF FAMILY SERIES
12 LP d/b/a SERIES III, ONTARIO ENTERPRISES
13 OF THE WOLF FAMILY SERIES LP
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1 **CERTIFICATE OF SERVICE**

2 I, Simon Aron, certify that on January 31, 2019, I caused a true copy of the
3 following document(s) described as OBJECTION OF WOLF FAMILY SERIES LP
4 D/B/A SERIES III, WOLF FAMILY SERIES LP D/B/A SERIES VII, ONTARIO
5 ENTERPRISES OF THE WOLF FAMILY SERIES LP TO SUPPLEMENTAL NOTICE
6 OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF
7 EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH
8 GLOBAL SALE TRANSACTION via transmission of Notice of Electronic Filing
9 generated by CM/ECF on all parties of record, and on parties listed below as indicated.

10
11 DATED: January 31, 2019

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

14 By: /s/ Simon Aron

15 SIMON ARON

16 Attorneys for Creditor WOLF FAMILY SERIES
17 LP d/b/a SERIES III, ONTARIO ENTERPRISES
18 OF THE WOLF FAMILY SERIES LP

1
SERVICE LIST

2
VIA EMAIL

3
I. Bid Notice Parties

4
a. Debtors

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Rob Riecker: rob.riecker@searshc.com
Luke Valentino: luke.valentino@searshc.com
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b. Debtors' counsel

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Garrett A. Fail, Esq.: garrett.fail@weil.com
Sunny Singh, Esq.: sunny.singh@weil.com

8
c. Debtors' investment banker: project.blue.rx@lazard.com

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II. Buyer Parties

10
a. Buyer

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Kunal S. Kamlani: kunal@eslinvest.com
Harold Talisman: harold@eslinvest.com

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b. Counsel

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Christopher E. Austin, Esq.: caustin@cgsh.com
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Sean A. O'Neal, Esq.: soneal@cgsh.com

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III. Consultation Parties

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a. Bank of America

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Paul Leake, Esq.: Paul.Leake@skadden.com
Simla Elberg, Esq.: Shana.Elberg@skadden.com
George Howard, Esq.: George.Howard@skadden.com

17
b. Wells Fargo Bank

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Kevin J. Simard, Esq.: ksimard@choate.com
Jonathan D. Marshall, Esq.: jmarshall@choate.com

19
c. Committee

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Ira S. Dizengoff, Esq.: idizengoff@akingump.com
Philip C. Dublin, Esq.: pdublin@akingump.com
Abid Qureshi, Esq.: aqureshi@akingump.com
Sara L. Brauner, Esq.: sbrauner@akingump.com

1 **VIA FIRST CLASS MAIL**

2 Transform Holdco, LLC
c/o ESL Partners, Inc.
3 Attention: Kunal S. Kamlani and Harold Talisman
1170 Kane Concourse, Suite 200
4 Bay Harbor Islands, FL 33154

5 Sears Holding Corporation
3333 Beverly Road
6 Hoffman Estates, IL 60179

7 Weil, Gotshal & Manges LLP
Attention: Ray C. Schrock, P.C.,
8 Ellen J. Odoner, Gavin Westerman and Sunny Singh
767 Fifth Avenue
9 New York, NY 10153

10 Clearly Gottlieb Steen & Hamilton LLP
Attention: Christopher E. Austin,
11 Benet J. O'Reilly and Sean A. O'Neal
One Liberty Plaza
12 New York, NY 10006

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